

New College Durham Academies Trust

Conflicts of Interest Policy

Approved by the Board on 26 March 2015

New College Durham Academies Trust (“the Trust”)

Conflicts of Interest Policy¹

Purposes of the policy

Directors of a charitable company limited by guarantee have two sets of similar, and largely overlapping, duties to avoid conflicts of interest. The first duty comes from the charity law duty imposed on the Directors by virtue of their position as charity law trustees. The second duty comes from company law by virtue of their position as company law directors.

The Directors have a legal obligation to act in the best interests of the Trust and in accordance with the memorandum and articles of association (its governing document) and to avoid situations where there is an actual conflict of interests or a potential conflict of interests where it is reasonably perceived that an actual conflict could emerge.

Article 97 of the articles of association imposes on the Directors and Local Governing Body Members an obligation to disclose any actual or potential conflicts of interest and withdraw from discussions of the Directors or Local Governing Body where it is possible that a conflict of interests may arise.

The charity law duty is derived from common law whereas the company law duty can be found in the Companies Act 2006.

Building on these duties imposed by law, it is the policy of the Trust that all Directors, Local Governing Body Members and senior staff attending Board and/or Local Governing Body / committee meetings having significant budgetary authority must keep to the absolute minimum all unavoidable conflicts of interest between the interests of the Trust on the one hand and the personal, professional and business interests of the Director, Local Governing Body Member or senior staff member concerned, and of persons connected with them², on the other. This includes avoiding as far as possible perceptions of conflicts of interest, as well as potential and actual conflicts of interest.

¹ This policy should be read in conjunction with the Charity Commission’s guide “Conflicts of interest: a guide for charity trustees”
http://webarchive.nationalarchives.gov.uk/+/http://www.charitycommission.gov.uk/charity_requirements_guidance/charity_governance/good_governance/conflicts.aspx.

The policy should be included in the Governors’ Handbook or other induction material provided to all governors.

² For the definition of 2connected person see Charities Act 2011, s.188.

The purposes of this policy are:

- to ensure that the Directors comply with their legal duties;
- to protect the integrity of the Trust's decision-making process;
- to enable all outside parties dealing with the Trust to have confidence in its integrity; and
- to protect the integrity and reputations of the Directors, Local Governing Body Members and senior staff.

Interpretation

'Trust Board' means the Board of Directors of New College Durham Academies Trust;

'Director' means a Director of the Board of Directors;

'LGB' means the Local Governing Body, a committee of the Trust Board, established for the purposes of overseeing the operation of an Academy;

'LGB Member' means a Member of the Local Governing Body;

'the Trust' means New College Durham Academies Trust.

Conflict of interests

A conflict of interests is any situation in which a Director's personal interests (or a person connected to a Director), or interests that they owe to another body, may (or may appear to) influence or affect the Director's decision making.

Disclosure of interests

From the adoption of this policy, or upon being appointed, whichever is later, all Directors and LGB Members of the Trust and senior staff will be required to make a full written disclosure of any business or personal relationships held, financial or property interests held, or gifts or hospitality received, that could potentially result in a conflict of interests. A declaration of interests form is provided and must be used for this purpose. Any question about whether a Director has an interest which should be disclosed should be referred in the first instance to the Chair or Company Secretary for a determination.

Written disclosures will be kept on a register maintained by the Company Secretary and all Directors, LGB Members and senior staff will be required to update their disclosure as and when their circumstances change. All disclosures will be reviewed on an annual basis at the beginning of each fiscal year. The register will be accessible by Directors and the internal and external auditors. It will also be available to the finance staff and those responsible for making purchasing decisions so that staff are aware of any connected party relationships and to protect the interests of the Trust. In accordance with the Academies Financial Handbook, the Trust must publish on its website relevant business and pecuniary interests of Directors and Local Governing Body Members.

Organisation of meetings where a Director has disclosed an interest

Where a Director or LGB Member has previously disclosed an interest and the Chair or Company Secretary/Clerk is satisfied that the interest is relevant to an item on the agenda for a meeting of the Directors or a Governing Body committee the Director concerned may not be sent the papers in respect of that item.

Management of conflicts of interests in meetings etc

This section of the policy should be read in conjunction with Articles 97-98 of the Trust's Articles of Association.

In the course of meetings of the Directors or a committee and all other activities all Directors, LGB Members and senior staff will be required to disclose any interests they have in a transaction or decision where they, their family, their employer or their close business or other associates will or may receive a benefit or gain or they have any other interest of a type identified by the Trust. If there is a failure to declare an interest that is known to the Chair and/or the Chair of the committee or of any such meeting/person responsible for organising such activities and/or the Secretary, the Chair or other such person or the Secretary will declare that interest. After disclosure of any such interest, in the case of a meeting the Director, LGB Member and/or senior staff member concerned will be asked to leave the room (unless expressly invited to remain, possibly in order to provide information on the matter in hand) whilst the matter is discussed. The Director/LGB Member will not be counted in the quorum for that part of the meeting and will not be permitted to vote on the question. In the case of all other activities, the Director, LGB Member or staff member concerned will not be permitted to participate in the consideration or discussion of the matter other than to disclose his or her conflict of interest.

All decisions of the Board or committee made following the declaration of a conflict of interest will be reported in the minutes of the meeting. The report will record:

- the nature and extent of the conflict;
- an outline of the discussion;
- the actions taken to manage the conflict.

Where a Director, LGB Member or senior staff member benefits from any such decision, this will (if the Trust's auditors advise this to be necessary) be reported in the annual report and accounts in accordance with relevant accounting requirements.

Failure to disclose a relevant interest

The decision of the Chair as to whether a Director or LGB Member has failed to disclose a relevant interest shall be final. Failure to disclose a conflicting interest may lead to a Director or LGB Member being in breach of the Governing Body's Code of Conduct as well as of this policy. It may also result in the Director being subject to legal action and personal liability for breach of trust and breach of statutory duty under the Companies Act 2006. Such breaches may lead to the Board considering the possibility of removing the Director from office. Such breaches by a senior member of staff may lead to disciplinary action being taken under the staff disciplinary procedures.

Benefits for Directors

It is a basic principle of charity law that charity trustees, such as Directors of the Trust, should not profit from their position, although trustees are entitled to be reimbursed for reasonable expenses properly incurred in undertaking the business of the charity. This is reflected in Article 6.5 of the Articles of Association. The Board has approved a policy on reimbursing Directors' expenses and Directors must comply with this. In addition, Article 6.3 of the Articles of Association allows the Trust to insure Directors against liabilities arising from their office.

The Charities Act 2011 provides a detailed process whereby, exceptionally, charity trustees or persons connected to them may be allowed to receive payment from the funds of the charity for goods or services provided by them to the charity under a contract for services. This procedure is reflected in Articles 6.8-6.9 of the Articles of Association, which must be followed if a Director wishes to receive such a payment for him/herself or a connected person.

Charity trustees are not allowed to receive remuneration simply for undertaking their duties as a trustee without the consent of the Charity Commission. This is only granted in exceptional circumstances.³ Similarly, charity trustees are not allowed to be employed by the charity under a contract of service save where allowed by the charity's governing document, or by law, or with the consent of the Charity Commission, which is only granted in exceptional circumstances.

Data Protection

The information provided in disclosures will be processed in accordance with the data protection principles set out in the Data Protection Act 1998. Data will be processed only to ensure that Directors and Local Governing Body Members act in the best interests of the Academies Trust and to comply with funding body requirements. The information provided will not be used for any other purpose.

Review of this policy

This conflicts of interest policy will be reviewed by the Directors on an annual basis or more frequently should circumstances change.

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This document is based on a template provided by Eversheds LLP 2014.

³ See the Charity Commission's guidance *Payment and expenses of college governors*: <http://www.charitycommission.gov.uk/detailed-guidance/specialist-guidance/schools,-colleges-and-universities/payment-and-expenses-for-college-governors/> Legal advice should be obtained before submitting an application to the Commission.